UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/102
21 March 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 20 of the provisional agenda

RIGHTS OF THE CHILD

Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its second session

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	3
I.	ORGANIZATION OF THE SESSION	3 - 16	3
	A. Opening and duration of the session	3	3
	B. Election of the Chairman-Rapporteur	4	3
	C. Participation	5 - 12	3
	D. Documentation and organization of work	13 - 16	4
II.	GENERAL DISCUSSION	17 - 57	5
	Particular views expressed by some delegations	48 - 57	10

GE.96-11766 (E)

CONTENTS (continued)

		Paragraphs	Page
III.	PROPOSALS CONCERNING THE DRAFT OPTIONAL PROTOCOL . .	58 - 141	11
	A. Preamble	59 - 89	11
	B. Article 1	90 - 102	15
	C. Article 2	103 - 117	17
	D. New article A	118 - 124	21
	E. Article 3	125 - 126	22
	F. New article B	127 - 130	23
	G. New article C	131 - 134	23
	H. Article 4	135 - 137	23
	I. Article 5	138 - 139	24
	J. New article D	140 - 142	24
	K. Articles 6, 7, 8, 9 and 10	143	24
Annex:	Draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts		25

Introduction

1. The Commission on Human Rights, in paragraph 16 of its resolution 1995/79, requested the working group on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts to meet for a period of two weeks prior to the fifty-second session of the Commission to pursue its mandate.

2. The Economic and Social Council, in its resolution 1995/37, authorized the open-ended working group to meet for a period of two weeks prior to the fifty-second session of the Commission on Human Rights.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The second session of the working group was opened by the Assistant Secretary-General for Human Rights, who made a statement. During the session the Working Group held seven plenary meetings from 15 to 26 January and on 21 March 1996.

B. Election of the Chairman-Rapporteur

4. At its 1st meeting, on 15 January 1996, the working group elected Mr. Nils Eliasson (Sweden) Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Algeria, Australia, Austria, Bangladesh, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Cuba, Denmark, El Salvador, Ethiopia, France, Germany, Italy, Japan, Malaysia, Mexico, Netherlands, Nicaragua, Pakistan, Peru, Philippines, Republic of Korea, Russian Federation, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

6. The following States, non-members of the Commission, were represented by observers: Albania, Argentina, Belgium, Cyprus, Finland, Greece, Iraq, Israel, Kenya, Libyan Arab Jamahiriya, Morocco, New Zealand, Nigeria, Norway, Poland, Romania, Senegal, Singapore, Slovakia, South Africa, Syrian Arab Republic, Sweden, Tunisia, Turkey, United Republic of Tanzania, Uruguay.

7. The following non-member States of the United Nations were also represented by observers: Holy See, Switzerland.

8. The following United Nations bodies were represented by observers: United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees.

9. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies were also represented by observers.

10. The following non-governmental organizations were represented by observers: Associated Country Women of the World, Baha'i International Community, Friends World Committee for Consultation (Quakers), International Association of Penal Law, International Council of Voluntary Agencies, International Federation of University Women, International Federation Terre des Hommes, International Peace Bureau, International Save the Children Alliance, International Service for Human Rights.

11. Pursuant to the invitation contained in paragraph 17 of Commission resolution 1995/79, the Committee on the Rights of the Child was represented at the meetings of the working group.

12. At the 4th meeting, on 17 January 1996, Ms. M. Santos Pais, Rapporteur of the Committee on the Rights of the Child, delivered a statement on behalf of the Committee. Mr. Y. Kolosov, another member of the Committee, also attended the meeting. (See paras. 35-46 below.)

D. Documentation and organization of work

13. The working group had before it the following documents:

E/CN.4/1996/WG.13/1	Provisional agenda
E/CN.4/1996/WG.13/2 and Add.1	Report of the Secretary-General prepared pursuant to paragraph 15 of Commission on Human Rights resolution 1995/79: Comments on the report of the working group
E/CN.4/1995/96	Report of the first session of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts

14. The working group adopted its agenda, as contained in document E/CN.4/1996/WG.13/1, at its 1st meeting, on 15 January 1996.

15. At the 3rd meeting, on the proposal of the Chairman-Rapporteur, the working group decided to convene an informal drafting group in order to speed up the drafting process and to shorten its report, bearing in mind the 32-page limit on the length of documents. The informal drafting group, headed by the Chairman, held 12 meetings, from 16 to 24 January 1996.

16. At the 1st meeting, the Chairman-Rapporteur proposed that, for ease of identification of the various "new articles" which were included in the draft optional protocol, as contained in the annex to document E/CN.4/1995/96, the first new article (placed after art. 2) would become "new article A", the

second new article (placed after art. 3) would become "new article B", the third new article (placed before art. 4) would become "new article C", and the fourth new article (placed after art. 5) would become "new article D".

II. GENERAL DISCUSSION

17. At its 1st to 5th meetings, on 15 to 17 and 25 January 1996, the working group, at the invitation of the Chairman-Rapporteur, held a general discussion on various questions relating to the draft optional protocol, including such substantive matters as the age limits, the question of direct or indirect participation in hostilities, and the issue of compulsory and voluntary recruitment into either governmental or non-governmental armed forces.

18. Similar to what transpired during the deliberations at the first session of the working group, the general feeling again was that the practice of the use of children as soldiers should be eradicated and that, as one of the means to achieve that purpose, the minimum age for recruitment of persons into armed forces should be raised. The Chairman-Rapporteur recalled in that connection the request made by the World Conference on Human Rights to the Committee on the Rights of the Child, in paragraph 50 of the Vienna Declaration and Programme of Action, "to study the question of raising the minimum age of recruitment into armed forces".

19. All the participants agreed that the best interests of the child should prevail in all circumstances and thus be a guiding principle in drafting the optional protocol, which should be adopted without delay.

20. In the course of the discussion, various views were expressed with regard to the objectives of the future optional protocol and its contents.

21. It was pointed out that in elaborating the optional protocol members of the working group should be guided not by their national legislation, but by the task of introducing into international law the highest possible new standard in that field.

22. Reference was made to recent statistical data according to which in 70 out of 99 countries that had a minimum age for military recruitment, it was 18 or more. It was argued in that connection that an international rule specifying 18 years without exceptions would merely be a codification of existing national law in most countries of the world.

23. Reference was also often made to section C (d) of a resolution adopted in December 1995 by the 26th International Conference of the Red Cross and Red Crescent, in which it was recommended that parties to a conflict "refrain from arming children under the age of 18 years and take every feasible step to ensure that children under the age of 18 years do not take part in hostilities".

24. The vast majority of participants expressed their willingness to prohibit the participation of persons under the age of 18 in hostilities. However, several delegations argued that, while all efforts should be made in order to avoid the participation of children in armed conflicts, this should not prevent States from recruiting, on a voluntary basis, persons below the age

of 18 into their armed forces, when their national legislation allowed it under specific conditions and circumstances. In elaborating their views, some delegations referred to the economic difficulties faced by their countries and stated that the army was sometimes the only solution to mitigate a high rate of unemployment among young people. It was also emphasized that being recruited did not necessarily lead to participation in hostilities.

25. Several other delegations strongly opposed voluntary recruitment of children under the age of 18 years, even with the consent of their parents or legal guardians. It was argued that the true nature of "voluntary" was often open to question and that the degree of real voluntariness remained problematic. It was also pointed out that child soldiers did not choose the circumstances they faced. In practice, they often had no real choice other than to participate in armed conflicts.

26. The view was also expressed that the distinction between voluntary and compulsory recruitment would be very difficult to enforce in practice. Some participants regretted therefore that a distinction between voluntary and compulsory recruitment was made in the text of the draft optional protocol and that an age limit of 16 years was established with regard to voluntary recruitment, thus setting a double standard.

27. Various views were expressed with regard to the issue of the distinction between direct and indirect participation of children in armed conflicts. Some delegations were in favour of keeping in draft article 1 the mention of direct participation in hostilities. They argued that the text of the protocol should be consistent with the terminology used in the Convention on the Rights of the Child, in particular its article 38, which referred to direct participation of children in armed conflicts.

28. Other participants felt that the optional protocol should not qualify the prohibition on participation of children in hostilities, and that the prohibition on participation should be very broadly construed to prevent both direct and indirect participation in armed conflicts. Some delegations stated that, through their field experience, they had learned that it was very difficult to draw a dividing line between these two forms of participation. Furthermore, what initially might involve participation of a merely indirect nature, might later, by will or as a matter of necessity, evolve into direct participation. Therefore, a non direct participant was a potential direct participant in an armed conflict.

29. Some participants pointed out that the main purpose of the protocol should be the fullest possible protection of children from being involved in whatever way in armed conflicts, and the absence of any distinction would only permit to ensure a broader protection of children. The attention of the working group was drawn to the text of Protocol II Additional to the Geneva Conventions of 1949, which did not distinguish between direct and indirect participation and which only referred to the prohibition of participation of children in armed conflicts. The need was stressed for consistency of wording between the future optional protocol and international humanitarian law. Some delegations wished to have a more precise definition of indirect participation in an armed conflict.

30. Some delegations proposed that the protocol should exclusively use the expression "armed conflicts" and not the word "hostilities". They felt that the word "hostilities" was too vague and did not clearly express the purpose of the protocol, while the notion of "armed conflict" had a clear definition in international humanitarian law. On the contrary, other participants preferred the use of the word "hostilities" for the sake of consistency with the terminology used in article 38.2 of the Convention on the Rights of the Child.

31. It was pointed out that most armed conflicts nowadays were not international wars but rather internal civil conflicts in which non-State armed forces were involved. It was felt that the protocol would be failing in its aim of protecting children from involvement in armed conflicts unless it addressed the problem of children serving in non-governmental armed forces or groups. The view was expressed by many participants that the use of children as soldiers by any group should be prohibited by the optional protocol. At the same time, many delegations were cautious, wishing to avoid equating armed groups with States parties and not to provide recognition to such groups in an international legal document.

32. While some delegations felt it necessary for the protocol to cover non-governmental armed forces since they could be a party to a conflict, others preferred to refer only to the responsibility of States as subjects of international law. It was argued that States would not be in a position to guarantee that non-governmental armed groups would abide by the protocol, and that the fact of mentioning them in the protocol could give them a legal status and international ambitions. The general feeling was that the obligation of a State party should be to take all feasible measures to ensure that armed groups in its territory abided by the protocol, and that a reference to non-governmental armed forces should therefore be made in the protocol.

33. Several delegations stated that the general prohibition on participation of children in armed conflicts should not prevent States from enlisting or admitting persons under 18 years of age into military schools or providing them with military training and education. They considered that the establishment or existence of military schools was possible so long as students under 18 years of age took no part in hostilities. It was pointed out that in most legislations, students in military schools were members of the armed forces and the schools were under the control of Ministries of Defence.

34. Some participants expressed concern also that military training within these schools could increase the likelihood of students, as they were members of the armed forces, being involved in hostilities. They therefore suggested that similar protections as those for voluntary recruitments should be reflected (such as age limits for military training).

35. At the 4th meeting, on 17 January 1996, Mrs. Santos Pais and Mr. Kolosov, members of the Committee on the Rights of the Child, made statements on behalf of the Committee and participated in the discussions of the working group.

36. The members of the Committee on the Rights of the Child recalled the initiative taken by the Committee in 1992 with regard to the issue of the involvement of children in armed conflicts, when it had recognized the importance of raising to 18 years the age of recruitment into armed forces. The Committee had been encouraged by the call made by the World Conference on Human Rights to the Committee to study that question. It had therefore decided to submit a preliminary draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts to the Commission on Human Rights (E/CN.4/1994/91, annex). That text had constituted the basis for the deliberations of the working group.

37. The members of the Committee stressed the importance the Committee attached to the work of the working group and to the future protocol, which should try to ensure the effective protection of children's rights worldwide in situations where they became particularly vulnerable, as was clearly the case of armed conflicts.

38. The members of the Committee stressed that since it was a draft optional protocol to the Convention on the Rights of the Child, only those States parties which were in a position to do so would ratify or accede to it. The Committee considered that the optional protocol should strengthen the levels of protection of, and respect for, the rights of the child. Being complementary to the Convention on the Rights of the Child, the optional protocol would not need to repeat provisions already existing in the Convention. It was emphasized that the reason for the optional protocol was to go beyond what was already in the Convention. Otherwise, there was no need for such an instrument.

39. It was the belief of the Committee that persons under the age of 18 should never be involved in hostilities, either directly or indirectly, and should not be recruited into armed forces, even on a voluntary basis.

40. With regard to the issue of direct or indirect participation, the members of the Committee pointed out that, in a situation of emergency, it was very difficult to draw the line between what was to be considered direct and indirect participation. Risks encountered and fundamental rights denied were similar in both cases, and any situation undermining respect for the rights of the child should be clearly avoided. For that reason, the Committee was convinced that a clear prohibition on the participation in hostilities of persons under the age of 18, either directly or indirectly, should be reflected in the optional protocol.

41. The Committee also believed that, in order to ensure the full realization of children's rights as recognized by the Convention, States parties should not recruit into their armed forces persons under the age of 18. The same rule should apply as a matter of principle to voluntary enlistment. It was stressed that voluntary enlistment in the armed forces should never be used as an excuse to allow for the possible direct or indirect participation in hostilities of persons under the age of 18. Even in those situations where voluntary enlistment would be accepted by States, the training of such persons should incorporate and pay due regard to education on humanitarian law and human rights.

42. With regard to situations of recruitment or enlistment of children by armed groups, the Committee preferred a child-centred approach prohibiting the participation in hostilities, in whatever form, of persons under the age of 18. It was pointed out in that connection that the main emphasis should be on the right of children not to be used in hostilities, rather than on the question of who should not use them.

43. The Committee on the Rights of the Child had taken note with interest of the proposal made in the working group on the role of the Committee to consider situations where children under the jurisdiction of a State party would have been recruited or used in hostilities. The Committee considered that such a role fell within its functions of assessing progress made in the enjoyment of children's rights and encouraging measures for their effective realization under any circumstance.

44. With regard to the issue of possible reservations to the optional protocol, the Committee insisted that the original intention of that document was to allow States parties which were in a position to do so clearly to commit themselves not to recruit or allow the participation in hostilities of any person under the age of 18. For that reason, and in the light of its optional nature, the Committee saw no reason for that instrument to admit possible reservations on the single subject addressed by it.

45. Regarding the question of the use in the protocol of the words "hostilities" or "armed conflicts", the members of the Committee on the Rights of the Child felt that, in order to be consistent with the Convention, the word "hostilities", which was already used in article 38 of the Convention, should be used in the protocol.

46. Discussion also took place concerning the objectives of the protocol. While some delegations preferred to draft a protocol of a compromise nature which could subsequently be ratified by a maximum number of States, other delegations, as well as the members of the Committee on the Rights of the Child, were in favour of a stronger protocol which would only be acceded to by States able to abide by its provisions.

47. Subsequently the Chairperson of the Committee on the Rights of the Child addressed to the Chairman-Rapporteur of the Working Group a letter dated 26 January 1996 stating, inter alia, the following:

> "The Committee would like to reiterate its support to this important standard-setting activity, which will no doubt lead to the enhancement of the system of protection of children's rights. In this spirit, the Committee wishes to reaffirm its firm belief that persons below the age of 18 should not be directly or indirectly involved in hostilities, nor recruited into armed forces, a principle that should also apply in situations of voluntary enlistment. The Committee further believes that in relation to situations of enrolment or enlistment by armed groups other than governmental, the same protection should be ensured to children below 18."

Particular views expressed by some delegations

48. Speaking on behalf of several delegations, the representative of Canada stated that those delegations would regard it as a matter of serious concern were the working group to adopt the second option for article 1 and thereby remove the protection against direct participation in hostilities that article 38.2 of the Convention already extended to children under 15 years of age.

49. The representative of Cuba expressed his delegation's concern about the possibility that an optional protocol could include provisions constituting an amendment to article 1 of the Convention on the Rights of the Child, which gave a definition of the child.

50. The representative of the Netherlands pointed out that during the discussions held in the informal drafting group several delegations had expressed the view that article 38 of the Convention on the Rights of the Child constituted a derogation from article 1 of the Convention. As the draft optional protocol would replace paragraphs 2 and 3 of article 38 of the Convention, it would not amend in any way article 1 thereof.

51. In the opinion of several delegations, as expressed by the representative of the Netherlands, in the course of the session a choice had emerged that was of a political nature and thus should be decided upon by the parent body, the Commission on Human Rights. The choice was that between a protocol marking an important step forward that would be open for signature in the very near future and, on the other hand, a more comprehensive protocol which would take a considerable time to be acceptable to all members of the working group.

52. After prolonged discussion on the advisability of the inclusion of new article D in the draft optional protocol both for reasons of a legal and a practical nature and following a question put in that regard by the observer for the Holy See, suggestions were made on the possibility of a separate study, for example, by the Office of the High Commissioner for Human Rights, on those aspects. The Committee on the Rights of the Child and the appropriate legal services of the United Nations might have to be consulted for that purpose. A suggestion to that end might be useful for consideration by the Commission on Human Rights.

53. The observer for Nigeria stated that conditions of peace and security and the full observance of the Charter of the United Nations alone might not be sufficient to guarantee the full protection of the rights of the child without taking into account the socio-economic environment of the child, in particular the unfavourable international economic environment militating against the well-being of the child.

54. In connection with article 2, the representative of France expressed the wish that it should be made clear that, for his country, compulsory recruitment concerned only conscripts in the context of national service, and excluded young voluntary recruits and young people who enlisted before being called up.

55. Also in connection with article 2, the representative of Denmark said that his delegation was in favour of a minimum age of 17 for voluntary recruitment.

56. Concerning the same article, the observer for Belgium pointed out that, in the view of his delegation, there should be no voluntary recruitment below the age of 18; it was in a spirit of compromise that his delegation had considered proposing voluntary recruitment from the age of 17.

57. The representative of Chile expressed the view that, in article 2, paragraph 4 should be formulated to make it clear that paragraph 2 of the article would not apply to enrolment in the armed forces for educational purposes and vocational training.

III. PROPOSALS CONCERNING THE DRAFT OPTIONAL PROTOCOL

58. At its 1st meeting, on 15 January 1996, the working group began its consideration of the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts as contained in the report of the Working Group on its first session (E/CN.4/1995/96, annex). Various proposals relating to the preamble and the operative part of that document were considered by the working group, as follows.

A. Preamble

59. At its 3rd meeting, on 16 January 1996, the working group began its consideration of the preambular part of the draft optional protocol.

60. Since no new proposals were made with regard to the first, second and seventh preambular paragraphs, their text remained unchanged (see annex).

Third preambular paragraph

61. The third preambular paragraph, as contained in the annex to document E/CN.4/1995/96, reads as follows:

> "Considering that to further [implement] [strengthen] the rights recognized in the Convention on the Rights of the Child, there is a need [to strengthen] [to increase] the protection of children from involvement in armed conflicts,"

62. At the 3rd meeting, the representative of the Netherlands, supported by the representatives of the United States of America, France, the United Kingdom of Great Britain and Northern Ireland and the observer for New Zealand, proposed to delete, in the first half of the sentence the word [implement] and, in the second half of the sentence, the words [to strengthen].

63. The representative of France suggested that in the French version the words "de toute implication" should be replaced by the words "contre toute implication".

64. Subsequent to the consideration of this paragraph by the informal drafting group, the third preambular paragraph was modified to read as follows:

> "Considering that to further strengthen the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflicts,"

Fourth preambular paragraph

65. The fourth preambular paragraph, as contained in the annex to document E/CN.4/1995/96, reads as follows:

> "[Noting that article 1 of the Convention recognizes every human being below the age of 18 years to be a child, unless under the law applicable to the child, majority is attained earlier,]"

66. At the 3rd meeting, on 16 January 1996, the representative of Cuba proposed to maintain this paragraph and to replace the word "Noting" by the word "Reaffirming".

67. The representative of the Netherlands, supported by the representative of Australia and the observers for Finland, Sweden and Switzerland, suggested the deletion of this paragraph.

68. Subsequent to the consideration of this paragraph by the informal drafting group, the fourth preambular paragraph remained unchanged.

Fifth preambular paragraph

69. The fifth preambular paragraph, as contained in the annex to document E/CN.4/1995/96, reads as follows:

> "[Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces [and their direct participation in hostilities] to 18 years, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children, while giving States Parties which find themselves in a position to do so the possibility to adhere to such a protocol],"

70. At the 3rd meeting, on 16 January 1996, the representative of the Netherlands, supported by the observer for New Zealand, proposed to delete the words "to 18 years".

71. The observer for the International Committee of the Red Cross (ICRC) suggested to delete the words "[and their direct participation in hostilities]", or at least the word "direct".

72. The representative of the Philippines supported the proposals made by both the representative of the Netherlands and the observer for the ICRC and proposed to delete the last part of the paragraph reading as follows: "while giving States Parties which find themselves in a position to do so the possibility to adhere to such a protocol".

73. The representative of Mexico and the observer for Switzerland agreed with the proposals made by the representative of the Philippines.

74. The observer for Finland suggested to delete the words "which find themselves in a position to do so".

75. The representatives of Australia and Mexico felt it necessary to delete the words "to 18 years" and the words "and their direct participation in hostilities".

76. Subsequent to the consideration of this paragraph by the informal drafting group, the fifth preambular paragraph was modified to read as follows:

> "Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces and their participation in hostilities, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,"

Sixth preambular paragraph

77. The sixth preambular paragraph, as contained in the annex to document E/CN.4/1995/96, reads as follows:

> "[Convinced that military invasions, foreign occupations, the use or the threat of the use of force, colonialism, the denial to the right to development and of the right of peoples to self-determination constitute the greatest obstacles to the realization of the rights of the child, in particular for the protection of children in armed conflicts],"

78. At the 3rd meeting, on 16 January 1996, the representative of the Russian Federation, supported by the representatives of the Netherlands, Japan, the United States of America, France, the United Kingdom, Cameroon, Brazil, Bulgaria, Australia and the observer for Argentina proposed to delete this paragraph. This proposal was opposed by the representative of Cuba and the observer for the Syrian Arab Republic, who reiterated the support of their delegations for the original text.

79. In the course of the consideration of this proposal by the informal drafting group, the representative of Cuba agreed not to insist on the inclusion of the original text of the sixth preambular paragraph in the draft optional protocol on the understanding that that text would be considered at the next session of the Working Group and would be the subject of further consultations.

80. The observer for Uruguay, supported by the representatives of Brazil, China, the Philippines, Bulgaria, Mexico, Australia, Colombia and the observers for the Libyan Arab Jamahiriya and New Zealand, proposed to insert as the sixth preambular paragraph the new article C, contained in the annex to document E/CN.4/1995/96 before article 4, which read as follows:

> "Conditions of peace and security based on unconditional respect of the purposes and principles contained in the Charter of the United Nations are an indispensable prerequisite for the protection of the child."

81. It was further proposed that the words "Bearing in mind that" should be added at the beginning of this text (see also paras. 133 and 134 below).

82. The observer for the International Peace Bureau proposed to replace in this text the words "the child" by the word "children".

83. The representative of the Russian Federation agreed with the proposal of Uruguay and suggested deleting the word "prerequisite".

84. The representative of Japan proposed to delete the word "unconditional".

85. The representative of the United Kingdom, supported by the representative of the United States of America suggested adding before the word "protection" the word "full".

86. The observer for the Syrian Arab Republic proposed to add, at the end of the text, the words "in particular during armed conflicts and foreign occupation."

87. Consequently, this preambular paragraph read as follows:

> "Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,"

New preambular paragraph

88. As a result of a proposal made by the representative of Mexico and discussed during the meetings of the informal drafting group, a new preambular paragraph, to be considered further at a later stage, was placed after the fifth preambular paragraph, reading as follows:

> "Noting with satisfaction that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,"

New preambular paragraph

89. Subsequent to the consideration of proposals made during the discussion of new article B in plenary meetings (see paras. 127-129 below) and in the informal drafting group, a new preambular paragraph, as proposed by the delegations of Australia and Cameroon, was placed before the original seventh preambular paragraph, reading as follows:

"Convinced of the need to strengthen international cooperation regarding the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflicts,"

B. Article 1

90. At its 1st meeting, on 15 January 1996, the working group began its consideration of article 1 of the draft optional protocol. The working group had before it three options for a possible article 1, as contained in the annex to document E/CN.4/1995/96, which read as follows:

"States Parties shall take all feasible measures to ensure that persons who have not attained the age of [18] [17] years do not take [a direct] part in hostilities [in armed conflicts]."

OR

"[In armed conflicts and without prejudice to international humanitarian law, States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities, unless under the law applicable to the child, majority is attained earlier.]

OR

"[States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take a direct part in hostilities, unless under the law applicable an earlier age is established in accordance with article 38 of the Convention.]"

91. At the same meeting, several proposals were submitted with regard to the first option for article 1.

92. The representative of the Philippines proposed to invert article 1 and article 2 and supported the first option for article 1. She also proposed to maintain the words "a direct" and "in armed conflicts" and was in favour of the age limit of 18 years.

93. The proposal to keep the age limit of 18 years was supported by the representatives of Australia, Cameroon, China, Colombia, the Netherlands, France, the Philippines, the Russian Federation, Mexico and Venezuela and by the observers for Norway, Switzerland, the Libyan Arab Jamahiriya, Sweden, Senegal, the Holy See, Uruguay, Slovakia, Finland, Argentina, Belgium, the United Nations Children's Fund, the International Committee of the

Red Cross, the International Federation of Red Cross and Red Crescent Societies and the Friends World Committee for Consultation (Quakers).

94. The representatives of Pakistan and the United States of America spoke in favour of an age limit of 17 years while the observer for South Africa proposed to retain brackets around 17.

95. The representative of the Republic of Korea supported the age limit of 18 years and therefore favoured the third option for article 1 as a second choice.

96. The representative of the Russian Federation proposed to keep in brackets both the 18 and 17 in order not to hamper the discussion of what had become one of the most disputable issues at that stage, and to refer to it later.

97. The proposal to maintain the words "a direct" was supported by the representatives of Japan and the United States of America and by the observer for South Africa, while the deletion of these words was favoured by the representatives of Australia, Germany, Cameroon, Venezuela and the Russian Federation and by the observers for Switzerland, Sweden, Belgium, Norway, Finland, Slovakia, the Holy See, the United Nations Children's Fund, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the Friends World Committee for Consultation (Quakers).

98. The proposal to maintain the words "in armed conflicts" was supported by the representative of China and by the observer for the Libyan Arab Jamahiriya, but it was opposed by the representatives of Australia, Germany, the Russian Federation and Japan and by the observers for Norway, the Holy See, Slovakia, Belgium, the International Committee of the Red Cross and the Friends World Committee for Consultation (Quakers), who favoured the term "hostilities".

99. The representative of Senegal suggested that article 1 should read as follows:

> "Les personnes n'ayant pas atteint l'âge de 18 ans ne participent pas aux hostilités".

100. The representative of Cuba suggested that reference to both 17 and 18 age limits be kept and that the words "a direct" and "in armed conflicts" be maintained in square brackets. She also reiterated her support for the third option of article 1.

101. At the 2nd meeting, on 15 January 1995, the representative of the Russian Federation proposed to insert the words "under their jurisdiction" after the word "persons".

102. Subsequent to the consideration of this article by the informal drafting group, article 1 was modified to read as follows:

"States Parties shall take all feasible measures to ensure that persons who have not attained the age of [18] [17] years do not take [a direct] part in hostilities.

OR

"[In armed conflicts and without prejudice to international humanitarian law, States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities, unless under the law applicable to the child, majority is attained earlier.]"

C. Article 2

103. At its 1st meeting, on 15 January 1996, the Working Group began its consideration of article 2 of the draft optional protocol, as contained in the annex to document E/CN.4/1995/96. The three options for this article read as follows:

" 1. States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their armed forces. Further, States Parties shall refrain from recruiting, even on a voluntary basis, any person who has not attained the age of 16 years into their armed forces.

2. States Parties shall ensure that every child who, of his or her own free will, chooses to enlist in their armed forces before reaching the age of 18 years does so with the full and informed consent of his or her parents, legal guardians or, if appropriate, other individuals or institutions legally responsible for him or her.

[3. States Parties may [shall] only recruit persons who have not attained the age of 18 years into their armed forces for educational purposes and for military training.]

OR

"[States Parties shall ensure that persons who are above 15 years of age, but who have not attained the age of 18 years may be recruited into the armed forces purely for educational purposes and for military training, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care.]

OR

"[States Parties shall only be able to recruit persons under the age of 18 years for educational and training purposes and for military service in armed forces.]"

OR

"[1. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 are not recruited into their armed forces.

2. States Parties shall only be able to recruit persons under 18 years of age for educational, training purposes and for regular programmes of enrolment in armed forces.]"

104. At the same meeting, the representative of the Philippines proposed that article 2 should be moved to become article 1, reading as follows:

"1. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years are not recruited into armed forces.

2. States Parties shall only be able to recruit persons under the age of 18 years of age for educational, training purposes and for regular programmes of enrolment in armed forces."

105. The representative of Cameroon suggested the inclusion in article 2 of the phrase "except for recruitment of students in time of peace".

106. The representative of the United States of America supported by the representatives of the United Kingdom, the Republic of Korea and Brazil and by the observer for New Zealand proposed the deletion of paragraph 3 of article 2.

107. The observer for Sweden supported by the representative of Mexico proposed to delete the second sentence of paragraph 1 of article 2.

108. The observer for the International Peace Bureau suggested that the word "child" in paragraph 2 should be replaced by the word "person".

109. The observer for Uruguay proposed to delete, in paragraph 1, the word "compulsory".

110. The representative of France proposed the addition, in paragraph 1 after the words "compulsory recruitment", of the words "for the purpose of engagement in an armed conflict".

111. At the 2nd meeting, on 15 January 1996, the representative of Cuba proposed a new text for paragraph 3 of article 2, which read as follows:

"3. States Parties may only recruit a person under the age of 18 years for educational and training purposes and for military service in armed forces, unless for these purposes and under the national law applicable to the child majority is attained earlier."

112. At the same meeting, the representative of the Russian Federation proposed a new version of article 2, which read as follows:

"1. States Parties shall ensure that persons who have not attained the age of 18 years are not subject to recruitment into their armed forces.

2. States Parties shall ensure that every person who, of his or her own free will, chooses to be enrolled for military training or educational purposes before reaching the age of 18 years does so with the full and informed consent of his or her parents, legal guardians or, if appropriate, other individuals or institutions legally responsible for him or her."

113. The observer for Romania proposed that in the wording of article 2 submitted by the delegation of the Russian Federation, after the words "armed forces", the phrase "or any other military groups in their territory" should be inserted. The observer for Romania also proposed to add a new sentence at the end of paragraph 1 of article 2 as proposed by the delegation of the Russian Federation, to read as follows: "The same responsibility should be borne by the military groups themselves without modification of their legal status".

114. The representative of Germany proposed to move the word "only", in paragraph 3, and to place it before the words "for educational purposes and for military training".

115. At the 5th meeting, on 25 January 1996, it was noted by several delegations that two particular proposals had formed the basis for the consideration of article 2 in the informal drafting group and that it would be useful for the future work on the draft optional protocol that those proposals be recorded in the report of the working group.

116. These two proposals, the first of which was submitted by the delegations of Belgium, Finland, Sweden and Switzerland and the second by the delegations of Australia, the Netherlands, Denmark, New Zealand, the United Kingdom and the United States, read as follows:

(a) "<u>Article 2</u>

1. States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

2. States Parties shall ensure that persons who have not attained the age of 17 years are not voluntarily recruited into their armed forces.

3. States Parties shall ensure that every person who, of his or her own free will, chooses to enlist in their armed forces before reaching the age of 18 years does so with the full and informed consent of those legally responsible for him or her.

4. Paragraph 2 of this article does not apply to enrolment in the armed forces for educational purposes."

(b) "Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not subject to compulsory recruitment into their armed forces.

New article

1. States Parties shall refrain from recruiting on a voluntary basis persons who have not attained the age of 16 years into their armed forces. This obligation is without prejudice to enrolment in establishments essentially with a civilian curriculum providing secondary education or vocational training operated by or under the supervision of their armed forces.

2. States shall nevertheless comply with article 1 of this optional protocol in relation to persons recruited in accordance with paragraph 1 of this article.

3. States Parties shall ensure that every person who, of his or her own free will, chooses to enlist in their armed forces or to enrol in military training establishments before attaining the age of 18 does so with the full and informed consent of his or her parents, legal guardians or, if appropriate, other individuals or institutions legally responsible for him or her."

117. Subsequent to the consideration of article 2 by the informal drafting group, this article was modified to read as follows:

"1. States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

2. [Without prejudice to article 1,] States Parties shall ensure that persons who have not attained the age of [16] [17] [18] years are not voluntarily recruited into their armed forces.

3. States Parties shall ensure that every person who chooses to enlist into their armed forces before reaching the age of 18 does so of his or her own free will and, unless he or she has already attained majority, with the full and informed consent of those legally responsible for him or her.

4. [Paragraph 2 does not preclude the recruitment, by the armed forces of States Parties, of those who have attained the age of 15 years for enrolment in educational institutions operated by or under the control of their armed forces, provided that they are not subject to military training before they have reached the age of [16] [17] [18] years].

OR

4. [This article does not apply to enrolment of students in educational or training establishments operated by or under the control of their armed forces in accordance with articles 28 and 29 of the Convention on the Rights of the Child]".

D. New article A

118. At the 2nd meeting, on 15 January 1996, the working group began its consideration of new article A as contained in the annex to document E/CN.4/1995/96, the three different options for which read as follows:

[1. In the case of armed groups, children who have not attained the age of 18 years shall neither be recruited nor be allowed to take part in hostilities.

2. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

3. States Parties shall take all feasible measures to prevent the use of their territories to encourage, instigate, organize or engage in the perpetration of such activities.

4. States Parties shall apply legal sanctions to persons committing or ordering to be committed a breach of paragraph 1 of this article.]

OR

[All parties in armed conflicts should respect the provisions contained in articles 1 and 2 of the present Protocol regarding the involvement of children therein in accordance with applicable international humanitarian law.]

OR

[1. [Children] [Persons] who have not attained the age of 18 years [shall] [should] neither be used in hostilities nor recruited by any party to any armed conflict [other than a State].

2. States Parties shall take all feasible measures to ensure the application of this article.]

OR

[The State Parties shall ensure to the extent possible, including throughout legal measures, that the provisions of articles 1 and 2 of the present Protocol are respected by other - non-governmental - armed groups operating within their territories. Non-governmental armed groups,

parties to the armed conflicts or hostilities shall be responsible for the full observance of the prohibition indicated/contained in article 1; the provisions of this article shall not affect the legal status of the non-governmental parties to the conflict or hostilities.]

119. The representative of the Netherlands, supported by the representative of Mexico and the observer for Norway, preferred the second option for new article A, in which he proposed to replace the word "should" by the word "shall" and to add, at the end of the article, the following sentence: "The application of the preceding provision shall not affect the legal status of the parties to the conflict".

120. The representative of the Philippines proposed to add a new second paragraph to the second option for article 2, which would read as follows: "States Parties shall apply legal sanctions to persons committing or ordering to be committed a breach of paragraph 1 of this article".

121. The representative of France proposed that new article A should read as follows:

"States Parties shall take all appropriate measures to ensure that the provisions of the present Protocol are applicable to all children, including those involved in armed conflicts or recruited by irregular armed forces in conflicts occurring in their territory."

122. The representative of Japan proposed to add, at the beginning of the second option for new article A, the following words: "States Parties shall take all feasible measures to ensure that".

123. Also in the second option, the representative of the United States proposed to add, after the words "all parties in armed conflicts", the words "occurring in the territory of States Parties".

124. Subsequent to the consideration of this article by the informal drafting group, new article A was modified to read as follows:

"States Parties shall take all feasible measures, including any necessary legislation, to prevent the recruitment of persons under the age of 18 years [of minors] subject to their jurisdiction by non-governmental armed groups [which are parties to] [involved in] an armed conflict."

E. Article 3

125. At its 2nd meeting, on 15 January 1996, the working group considered article 3, as contained in the annex to document E/CN.4/1995/96.

126. During the session of the working group no formal proposals were submitted concerning this article and its text remained unchanged (see annex).

F. New article B

127. At the 2nd meeting, on 15 January 1996, the working group considered new article B, as contained in the annex to document E/CN.4/1995/96, which read as follows:

> "[1. States Parties shall take all necessary measures for the physical and psychological rehabilitation and social reintegration of any child who is a victim of armed conflict, especially measures designed to guarantee, inter alia, medical care and adequate nutrition.
>
> 2. For the purposes contained in this article, international cooperation should be strengthened.]"

128. The representative of Cuba reiterated the support of his delegation for this text.

129. The representative of the Netherlands proposed to delete this article or to move it to the preambular part.

130. Subsequent to the consideration of this article by the informal drafting group, new article B was deleted and replaced by a new eighth preambular paragraph (see para. 89 above).

G. New article C

131. At the 2nd meeting, on 15 January 1996, the working group considered new article C, as contained in the annex to document E/CN.4/1995/96, which read as follows:

> "[Conditions of peace and security based on unconditional respect of the purposes and principles contained in the Charter of the United Nations are an indispensable prerequisite for the protection of the child.]"

132. At the same meeting, the observer for Uruguay proposed that new article C should be moved to the preambular part.

133. This proposal was supported by the representative of the Netherlands who suggested modifying the text by adding at the beginning of the article the words "Bearing in mind that".

134. Subsequent to the consideration of these proposals by the informal drafting group, new article C was modified and moved to the preambular part (see paras. 80 to 87 above).

H. Article 4

135. At the 2nd meeting, on 15 January 1996, the working group began its consideration of article 4, the three options for which were contained in the annex to document E/CN.4/1995/96.

136. No formal proposals were submitted concerning this article during the plenary meetings of the working group.

137. Subsequent to the consideration of article 4 by the informal drafting group, this article remained unchanged (see annex).

I. Article 5

138. At the 2nd meeting, on 15 January 1996, the working group began its consideration of article 5 as contained in the annex to document E/CN.4/1995/96.

139. During the session of the working group, no formal proposals concerning this article were submitted and its text remained unchanged (see annex).

J. New article D

140. At the 2nd meeting, on 15 January 1996, the working group took up consideration of new article D as contained in the annex to document E/CN.4/1995/96.

141. During the plenary meetings, no formal proposals concerning this article were submitted.

142. Subsequent to the consideration of new article D by the informal drafting group, it remained unchanged (see annex).

K. Articles 6, 7, 8, 9 and 10

143. Subsequent to the consideration of articles 6, 7, 8, 9 and 10, as contained in the annex to document E/CN.4/1995/96, by the working group in plenary meetings and by the informal drafting group, they remained unchanged (see annex).

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection and call for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Considering that to further strengthen the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflicts,

[Noting that article 1 of the Convention recognizes every human being below the age of 18 years to be a child, unless under the law applicable to the child, majority is attained earlier,]

Convinced that an Optional Protocol to the Convention, raising the age of possible recruitment of persons into armed forces and their participation in hostilities, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting with satisfaction that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Convinced of the need to strengthen international cooperation regarding the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflicts,

Recognizing with grave concern the growing trend towards recruitment, training and use of children in hostilities by armed groups,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that persons who have not attained the age of [18] [17] years do not take [a direct] part in hostilities.

OR

[In armed conflicts and without prejudice to international humanitarian law, States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities, unless under the law applicable to the child, majority is attained earlier.]

Article 2

1. States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

2. [Without prejudice to article 1,] States Parties shall ensure that persons who have not attained the age of [16] [17] [18] years are not voluntarily recruited into their armed forces.

3. States Parties shall ensure that every person who chooses to enlist into their armed forces before reaching the age of 18 does so of his or her own free will and, unless he or she has already attained majority, with the full and informed consent of those legally responsible for him or her.

4. [Paragraph 2 does not preclude the recruitment, by the armed forces of States Parties, of those who have attained the age of 15 years for enrolment in educational institutions operated by or under the control of their armed forces, provided that they are not subject to military training before they have reached the age of [16] [17] [18] years].

OR

4. [This article does not apply to enrolment of students in educational or training establishments operated by or under the control of their armed forces in accordance with articles 28 and 29 of the Convention on the Rights of the Child].

New article A

States Parties shall take all feasible measures, including any necessary legislation, to prevent the recruitment of persons under the age of 18 years [of minors] subject to their jurisdiction by non-governmental armed groups [which are parties to] [involved in] an armed conflict.

Article 3

Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law which are more conducive to the realization of the rights of the child.

Article 4

[No reservation is admissible to the present Protocol.]

OR

[No reservation is admissible to articles ... and ... of the present Protocol.]

OR

[A reservation incompatible with the object and the purpose of the present Protocol shall not be permitted.]

Article 5

The States Parties to the present Protocol shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, information on the measures that they have adopted to give effect to the present Protocol.

New article D

[1. If the Committee receives reliable information which appears to it to contain well-founded indications that recruitment or use of children in hostilities, contrary to the provisions of the present Protocol, is being practised in the territory of a State Party, the Committee may request the observations of the State Party with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may:

(a) Seek further clarification, information or comments from any source, including where applicable the source(s) of the original information;

(b) Hold hearings in order to clarify the situation.

3. The Committee may initiate a confidential inquiry, which may include a visit of its members (2-3) to the territory of the State Party concerned:

(a) Such a visit could take place only with the consent/after the consultation with the State Party concerned;

(b) If an inquiry is made in accordance with the present paragraph the Committee shall cooperate with the State Party concerned.

4. After examining the findings of its inquiry, made in accordance with paragraphs 2 and 3 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or recommendations which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 3, the Committee may decide to include a summary account of the results of the proceedings in its annual report.]

Article 6

The provisions of the present Protocol shall apply to the States Parties instead of article 38, paragraphs 2 and 3, of the Convention.

Article 7

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations in his capacity as the depositary of the Convention and the Protocol shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of ratification or accession to the Protocol.

Article 8

1. The present Protocol shall enter into force three months after the deposit of the [tenth] [twenty-fifth] instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 9

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations. If, however on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 10

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations together with the Convention on the Rights of the Child.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States Parties to the Convention and all States which have signed the Convention.